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Committee against Torture
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Summary record of the 1227th meeting
Held at the Palais Wilson, Geneva, on Thursday, 8 May 2014, at 3 p.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Montenegro (continued) (CAT/C/MNE/2; CAT/C/MNE/Q/2)

1. *At the invitation of the Chairperson, the delegation of Montenegro took places at the Committee table.*

2. **Mr. Kojović** (Montenegro) said, with regard to an independent judiciary, that judges were appointed and dismissed by the Judicial Council, itself an independent body, which also dealt with complaints against judges made by the public. The first-time appointment of a judge was based on his or her academic achievement, knowledge of computer technology and languages, communication and presentation skills and a good reputation. Candidates also had to write an anonymous test. To promote a judge, the Council considered the judgements issued, the manner and quality of such judgements and the judge's impartiality and honesty. All judges were expected to continue their training at the Judicial Training Centre, where courses were taught by local or foreign experts. The Judicial Council monitored the work of the courts and issued monthly and yearly reports for each judge. A special computer system was in place whereby the Council could retrieve all the necessary details on every judge, assessing the number of cases, the duration of trials and the application of the case law of the European Court of Human Rights. Judges were also monitored by non-governmental organizations (NGOs) and, in that connection, he noted that cooperation had improved with NGOs and international organizations. The results of trials were regularly published and public information was shown on television. A number of courts had their own press offices and information was published on their websites. The President of the Supreme Court held regular press conferences. The Supreme Court also had an office that received complaints relating to judgements by the country's courts. In 2008, there had been 921 complaints, whereas by 2013 the number had fallen to 293.

3. Any person subjected to torture was entitled to compensation. Under article 129 of the Criminal Code, there was no statute of limitations for torture, or for crimes against humanity, war crimes, corruption or organized crime. With regard to article 11 of the Convention, under article 17 (a) of the Code of Criminal Procedure, no court judgement could be based on evidence produced under torture. Force or the threat of force could not be used against anyone participating in criminal proceedings and a confession obtained by torture was invalid.

4. As for the training of law enforcement bodies, he said that the Judicial Training Centre had run courses on discrimination since 2012 and 63 judges had participated. Courts kept records of domestic violence cases, under article 220 of the Criminal Code. The statistics recorded included the number of domestic violence cases per court, the decision issued, the sentence imposed, the length of the trial and the age and sex of those indicted. Mitigating circumstances were taken into account, because the injured party was often reluctant to press charges, if the perpetrator was the family breadwinner or a large family was involved. In some cases, the defendant was required to undergo psychiatric or alcohol or drug addiction treatment.

5. **Mr. Rutović** said that if a person was summoned by the police, a reason had to be given. Any person who did not comply could be taken in by force, but the person could be kept at a police station for not more than six hours. It was not compulsory to provide information and a lawyer could attend throughout. A person who was arrested could require a third party to be informed, but a person under questioning could not.

6. With regard to the case of Aleksandar Pejanović, the facts were that, on 1 September 2009, six police officers had been indicted for the torture and ill-treatment he had suffered. Of those, three had been released for lack of evidence. The court of first instance had convicted the other three in June 2010, sentencing one to 3 months' imprisonment and 2 to 5 months' imprisonment. On appeal, a higher court (Judgement No. 2387/10) had found for the defendants and referred the case back to the lower court. All had been convicted again and had received sentences of 7 months' imprisonment. They had appealed again and the higher court had again ordered a retrial. The case was continuing.

7. A complainant or a complainant's family could request the State prosecutor to order a medical examination, which would be checked by a forensic expert. If the expert ruled that torture had occurred, an investigation was opened. The rules on medical examinations were complex and there was sometimes confusion over whether the police should inform the State prosecutor every time an examination was conducted. Free legal aid was granted by the courts, not by a prosecutor. The penalty for torture perpetrated by a private individual ranged from 6 months' to 5 years' imprisonment and 1 to 8 years' imprisonment if perpetrated by a public official or with an official's consent.

8. With regard to attacks on journalists, he said that, in the case of Mladen Stojović, who had been attacked in May 2008, the police had carried out an investigation, collecting information from the victim and others, but the identity of the perpetrator had never been established. The investigation was continuing. Another journalist, Olivera Lakić, had also been attacked and the perpetrator had been caught and sentenced to 9 months' imprisonment. He had no information on the other man mentioned by the Committee.

9. **Ms. Kalezić** (Montenegro) said, with regard to the case of Petar Komnenić, that the journalist had been charged with criminal defamation and fined €3,000, to be paid within three months. He had not paid the fine and had gone to prison, but the law had been changed in the meantime and Mr. Komnenić had been pardoned. In 2011, the offences of defamation and insult had been removed from the Criminal Code and all sentences based on those offences had been dismissed. The Supreme Court had ordered all courts to take into account the purpose of media comments, where they might appear defamatory. Any fine should be commensurate with European standards and should not have the effect of suppressing journalistic freedom.

10. **Ms. Djonaj** (Montenegro) said that, following reforms, the police were back under the control of the Ministry of the Interior. Police officers had the obligation to observe legality and respect human rights. An individual should be approached in a language that he or she understood, could choose not to answer questions and was informed of his or her rights. Medical assistance was given if needed. An arrested person was given an information form in one of six languages, which contained the time of the arrest, property in the individual's possession, the length of time the person had been on police premises, any complaints by the individual and any injuries. Video surveillance was in place in police stations and all video material was stored. The Ministry of the Interior had an ethics committee consisting of seven members, including representatives of NGOs and trade unions. In 2013, the Committee had considered 19 complaints and had found violations of the Ministry's code of ethics in 15 cases. Monitoring of the police was both internal and external, by the Ministry of the Interior and by a parliamentary committee, in line with international standards. Monitoring was also carried out by NGOs, universities and the Bar Association. Where the police exceeded their powers, they could be investigated by a special disciplinary body.

11. The Ministry of the Interior had enjoyed close cooperation with the lesbian, gay, bisexual and transgender (LGBT) community over the past six years. The Police Directorate had received the Friends of Justice Prize in 2012. Training had been provided in LGBT protection in Canada and the United States of America in July 2009. All complaints

by the LGBT activist Zdravko Cimbaljevic and others were recorded and processed and a case against persons who had attacked him was pending. Criminal reports had been drawn up on six individuals accused of violent behaviour.

12. With regard to domestic violence, she added that there were 10 multidisciplinary teams who coordinated their work to help victims. In 2014 to date, there had been 96 female victims of domestic violence and 21 persons had been arrested and charged. In 2013, there had been 745 victims. Preventive action could be taken, including restraining orders.

13. **Mr. Ulama** (Montenegro) said that the State party had stepped up efforts and allocated more resources to combating human trafficking. Shelters, counselling services and a 24-hour telephone helpline had been established for victims. Guidelines for identifying victims of trafficking among immigrants had been prepared for public officials and medical practitioners. Social workers, judges and prosecutors also received specialized training. The national anti-trafficking authorities would train border guards over the coming two years to detect such cases. The problem was studied in the police academy and a special police team would be set up with the aim of gathering as much evidence as possible to secure convictions against traffickers. Since 2011, public prosecutors had been empowered to lead inquiries into trafficking cases and victims were increasingly being encouraged to come forward as witnesses. Admittedly, the number of convictions of perpetrators to date had been low.

14. Under amendments to legislation, it was considered an aggravating circumstance when officials were involved in trafficking offences. The maximum age of child victims of trafficking for the purposes of adoption had been raised from 14 to 18. The trade in body parts had been included in legislation addressing trafficking in human beings.

15. Training was provided to public officials who dealt with Roma. Training programmes addressed specific issues such as early and arranged marriages. The authorities had signed an agreement with NGOs to work together on the issues of Roma children being used to beg or involved in early marriage. They were delicate subjects that the Government approached with caution. Peer teams worked with vulnerable groups on the ground. The Criminal Code had been amended to include provisions on early marriage, and the police and the Public Prosecution Service could investigate or mediate in such cases. Greater public awareness of the problems associated with early and arranged marriages was essential.

16. **Mr. Vučinić** (Montenegro) said that in June 2012 the Government had adopted a new domestic violence strategy, the objectives of which were to analyse the extent of the problem, harmonize the relevant legislation with international standards, improve the availability of victim support and raise public awareness. Coordination between the different bodies and training for professionals dealing with domestic violence had been stepped up.

17. Psychosocial treatment was available for offenders and a database of offenders and victims had been created. Several ministries, the Police Directorate, the Public Prosecution Service and children's courts had signed a protocol on dealing with domestic violence cases. Information programmes had been put together for schools and civic education teachers. The State party also took part in international awareness-raising campaigns on the issue. A centralized social care information system was being established as a key part of a plan to modernize the social care sector and harmonize its practices with those of European Union member States. There were four shelters for victims of domestic violence in the State party, three of which were run by NGOs. The fourth was a State-run children's shelter.

18. A strategy had been launched in 2013 to solve problems faced by displaced and internally displaced persons in the State party. Displaced persons in Konik camp had been

accompanied to Serbia and Kosovo to recover their personal identification documents in order to formalize their legal status in Montenegro. The Government was attempting to alleviate the housing shortage among displaced persons by providing them with low-interest housing loans. Roma and displaced persons would also benefit from a €27 million building plan to house 6,000 people. The great majority of asylum seekers did not pursue their applications for asylum in the State party.

19. **Ms. Rabrenović** (Montenegro) said that persons who applied for asylum in Montenegro were not extradited if they faced a risk of torture or ill-treatment. Conditions in short-stay and pretrial detention facilities had been improved. The European Union was helping the State party to improve prison conditions and develop a broader range of alternative forms of punishment to incarceration, thereby easing pressure on overcrowded penitentiary facilities. Unit A of Podgorica prison had been partially renovated. Renovation would be completed and a new pretrial facility and clinic would be added under an action plan for 2013–2018.

20. **Mr. Tugushi** (Country Rapporteur) reiterated that the sanctions applied for crimes of torture in the few cases that had hitherto been brought to trial in the State party had been woefully inadequate. Impunity was endemic and needed tackling. Otherwise public officials would maintain their cavalier approach to the matter. He repeated his earlier request for an explanation of the discrepancy between the Constitution, under which a person who was arrested had the right to notify family members immediately, and the relevant legislation, under which that right came into effect only 24 hours after arrest. He asked whether the right of a detainee to consult a medical practitioner was established by law, and whether the authorities planned to work with the Bar Association to ensure that detainees had access to qualified counsel from the time of arrest and not just in court. Did the State party plan to establish an independent body to monitor police conduct? He asked whether it was true that the State party had launched an action plan to combat inter-prisoner violence. If that was so, he would like to know more about the plan. He again asked whether the use of physical restraints in prisons was subject to medical approval.

21. In spite of laudable efforts by the State party to combat prejudice against LGBT people, reports of harassment, physical assault and even death threats against members of that community persisted. He asked whether the delegation could provide more information with regard to funding for and proposed legislative changes to the Office of the Protector of Human Rights and Freedoms of Montenegro. The Committee had received complaints regarding the lack of access to basic services, documentation and housing for displaced persons in Montenegro. Many applications for permanent residence by displaced persons appeared to be in abeyance. He asked whether progress had been made on improving their living conditions and processing applications for citizenship by those who had filed them.

22. **Ms. Belmir** (Country Rapporteur) reiterated her questions regarding the journalists mentioned in paragraphs 180–182 of the periodic report, and on how the Police Directorate would resolve such situations in the future. She asked the delegation to explain what impact the involvement of NGOs in the monitoring of the activities of the lower courts had on the independence of the judiciary.

23. She expressed doubt that officials such as border guards were sufficiently well-trained to deal with victims of human trafficking. It should not be up to victims alone to initiate criminal cases against the perpetrators. The Public Prosecution Service had an obligation to launch investigations where it possessed evidence of such activities. She asked for more detailed information on how the State party addressed the complex issues raised by Roma children in conflict with the law. She noted that, although the situation had improved over the previous decade, reports of ill-treatment by the police continued to reach the Committee. She asked whether the State party intended to reopen cases concerning crimes that had been committed during the war in the former Yugoslavia with a view to

facilitating national reconciliation. She asked for more detailed information about asylum application procedures and whether asylum-seekers could appeal against unfavourable decisions. She also wished to know whether statutes of limitations would apply to crimes of torture under new legislation.

24. **Mr. Modvig** asked whether there was an obligation for police stations and prisons to report cases of inter-prisoner violence to the central authorities. Given that the use of force was generally needed to interrupt such violence, was there an obligation to report all cases of the use of force and their justification? If so, he would welcome statistics in that regard.

25. **Mr. Tugushi**, noting that the description of injuries in the special logbooks introduced in prisons was often superficial, asked whether there were any plans to provide training to health-care staff in that regard. According to reports received by the Committee, injuries reported by health-care staff were not notified to the prosecutor's office. Were any steps being taken to rectify that situation? He would be interested to know whether there were any plans to ensure that prisoners were provided with purposeful activities instead of being kept in their cells. He wished to know what was being done to comply with the recommendation to reduce the maximum duration of disciplinary measures in the prison system, in line with international standards.

26. **Ms. Belmir**, noting the ambiguity surrounding the issue of early marriage, asked the delegation to comment on how the State party was dealing with the problem.

27. **Ms. Stanković** (Montenegro) said that the Protector of Human Rights and Freedoms (Ombudsman) was an independent institution for the protection of human rights. Under the 2011 Law on the Protector of Human Rights and Freedoms, the Office of the Ombudsman had been designated the national preventive mechanism. Following organizational restructuring, the institution had also acquired a deputy protector for the prevention of torture. The Office of the Ombudsman had issued a number of reports on torture against persons deprived of their liberty and conducted visits to prisons and institutions for children and older persons and made recommendations. The mailboxes for complaints in prisons and other institutions, including children's homes, had been placed outside the range of security cameras. Templates had been provided to help individuals fill out the forms. Although the Ombudsman's resources were insufficient, it was the only State institution whose budget had not been cut that year. The approval of the Ministry of Finance was required for any new recruitment.

28. **Ms. Radošević-Marović** (Montenegro) said that the Ministry for Human and Minority Rights was in charge of proposing legislation in the field of human rights and non-discrimination. The proposed amendments to the Law on the Protector of Human Rights and Freedoms were currently being reviewed by the Parliament and were expected to be adopted shortly. The revised legislation would define activities for the prevention of torture, improve the institution's financial position, provide for the creation of a number of new positions, and give the Ombudsman greater independence with regard to recruitment and promotions. It would also deal with the immunity of staff in the Office of the Ombudsman from any repercussions as a result of recommendations made in their official capacity.

29. With respect to the concerns raised about attitudes towards the LGBT community, major progress had been made in challenging traditional mentalities. The Government had adopted a strategy and action plan to improve the status of the LGBT community and enhance their integration in society. Measures covered all spheres of life, including the media, health care, culture and sport. The media were playing an important role in raising awareness of the need for tolerance towards the LGBT community. Under a recent amendment to the Criminal Code, discrimination on the basis of sexual orientation or gender identity was an aggravating circumstance in certain cases.

30. **Mr. Kojović** (Montenegro) said that there had been cases in which evidence obtained through torture had been dismissed from the case files. With regard to cases in which the Convention had been invoked, under the new judicial information system, it had become possible to search for cases in which international treaties ratified by Montenegro had been applied in a judgement. The Judicial Training Centre organized training seminars on torture every year. All Supreme Court judges had received training and several judges from the higher courts had been trained as instructors and, together with experts from the European Court of Human Rights, themselves gave training to judges of the lower courts. Most judges attended a session on the case law of the European Court of Human Rights every year. To date, there had not been any problems in the courts identifying offences as torture.

31. Under the Criminal Procedure Code, it was prohibited to threaten or commit violence against a suspect or accused person for the purpose of extracting a confession. Criminal offences of torture were prosecuted ex officio by the prosecution service. Detainees had access to legal counsel for the duration of their detention. The police and prosecution service had a duty to inform the family, or another person of the individual's choice, of a person's arrest within 24 hours, unless the arrested person requested them not to. Foreign nationals could request contact with the relevant diplomatic or consular offices or, in the case of stateless persons, international organization. The status of persons under arrest was regulated by the Criminal Procedure Code. The distinction between the relevant provisions in the Constitutional and the Criminal Procedure Code was that the latter specified a period of 24 hours for informing the person's family. If that distinction posed a problem, the provision could be deleted during the current review of the Code.

32. The Judicial Council did not have the power to uphold or overturn rulings itself, which was done by the courts of appeal. The Council assessed the quality of the work of the courts and judges and monitored the number of upheld and overturned decisions, the duration of court proceedings and respect for the right to a fair trial. The amendments to the Law on the Judicial Council were based on a long list of criteria proposed by experts from the Council of Europe. The courts cooperated with NGOs and often signed memorandums allowing a particular NGO to monitor the work of the courts and the judges in a particular area, for example in relation to pregnant women and women with small children. The NGOs then issued reports which were posted on the courts' websites and discussed on television.

33. **Ms. Rabrenović** (Montenegro) said that, in the past three years, the State party had embarked on an ambitious programme for the prison system and had built new facilities and brought others in line with international standards. Members of parliament, including some from the opposition, had visited the prisons to see the changes for themselves. There was a focus on the treatment of prisoners and the training of staff. With regard to disciplinary measures, efforts were being made to comply with international standards and the duration of disciplinary sanctions was being restricted.

34. At the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, prisoners currently underwent a medical examination within 24 hours of admission and a medical file was opened for them. Any visible injuries were immediately photographed and referred further. Rules had also been adopted for the medical screening of persons entering the prison on pretrial detention. A strategy had been put in place for dealing with inter-prisoner violence, including the training of security and medical staff on the prevention of ill-treatment and respect of human rights in such situations. In the Ministry of Justice, an authorized officer was responsible for monitoring the legality of measures taken in prisons and drew up reports with recommendations for the prison administration and monitored their follow-up. Prisoners could make complaints directly to the authorized officer. Under new prison rules,

prisoners were entitled to practise their religion and have contact with priests or other religious leaders. Prisons cooperated directly with various religious communities. Of a total of 1,064 remand and convicted prisoners, 872 were Montenegrin, followed by Serbs, Bosniaks, Croats and small numbers of other nationalities. Prisoners with medical conditions that could not be treated in the prison medical ward were referred to local hospitals.

35. **Mr. Magovčević** (Montenegro) said that training was being organized for medical staff on the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

36. **Mr. Rutović** (Montenegro), referring to the issue of legal aid, said that either the court or the prosecution service could dismiss a defence counsel if their work was not up to standard and appoint a replacement counsel. The Bar Association had to be informed of such dismissals. Although there were no specific provisions in relation to health care in the Criminal Procedure Code, the general provisions regarding the humane treatment of detainees were interpreted as ensuring access to health care.

37. **The Chairperson** said that any outstanding replies could be provided in writing. He thanked the delegation for the helpful dialogue.

38. **Ms. Rabrenović** (Montenegro) said that the State party had made huge strides since 2012 but acknowledged that there was still considerable room for improvement. The Committee's recommendations would help guide Montenegro's future work.

The meeting rose at 6.05 p.m.